

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAURICE CORTEZ MARTIN,

PETITIONER,

Vs.

CASE No.: 06-10024

CRIM. NO.: 02-80658

HONORABLE PAUL D. BORMAN

HONORABLE STEVEN D. PEPE

UNITED STATES OF AMERICA,

RESPONDENT.

ORDER REQUIRING SUPPLEMENTAL SUBMISSIONS

On January 4, 2006, Petitioner Maurice Cortez Martin filed his “Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody,” which alleges the District Court improperly sentenced Petitioner as a career offender under the federal sentencing guidelines (Dkt. #92). The Government responded that Petitioner was convicted, under Michigan law, of breaking and entering a building with intent three times – on June 7, 1989, September 7, 1989 and January 25, 1991 – and of felonious assault on August 8, 1997 (Dkt. #95). The Government contends that those convictions were for crimes that constituted “violent felonies” and therefore Petitioner was properly classified as an armed career criminal subject to the penalties set forth in § 924(e).

In support of Petitioner’s claim that he should not be sentenced as a career criminal, he has attached a court record that shows that he was found guilty on June 13, 1997, of two counts felonious assault and one count habitual- fourth offender, but that while his sentence for

habitual- fourth offender began August 8, 1997, his sentences for the two assault counts were vacated on the same date (Dkt. #92, p. 24).

Moreover, on April 14, 2006, Petitioner filed his response to an order show cause why this Court should grant his Motion for Leave To Supplement Motion (#99), which contained some additional exhibits with which Plaintiff wished to supplement his motion. Plaintiff's Exhibit B appears to be a lien sheet, which reports that two of Plaintiff's charges for assault with a dangerous weapon were dismissed on August 8, 1997.¹ In addition, the document reports that Plaintiff's January 25, 1991, charge was for entry without breaking, rather than for breaking and entering a building with intent as the Government claims. This charge is also listed as dismissed.

For the reasons stated above, **IT IS ORDERED** that on or before March 23, 2007, Respondent shall respond to Petitioner's claims, stated above, and provide the Court with supplemental documents in the form of official court documents and sworn affidavits, which conclusively show Petitioner was convicted, under Michigan law, of breaking and entering a building with intent three times – on June 7, 1989, September 7, 1989 and January 25, 1991 – and of felonious assault on August 8, 1997. Moreover, Respondent's submission should indicate with complete details the manner in which Petitioner's sentence in the instant case was calculated.

SO ORDERED.

Date: February 23, 2007
Ann Arbor, Michigan

s/Steven D. Pepe
United States Magistrate Judge

¹ It is noted that the same sheet reports that Plaintiff was found guilty on August 8, 1997 of Count III: "Habitual Offender-Fourth Offense Notice."

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2007, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: Diane L. Marion, Douglas R. Mulkoff, Elizabeth A. Stafford, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Maurice Cortez Martin, #307039, FCI, P.O. BOX 33, Terre Haute, In 47808

s/ James P. Peltier
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